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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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LAWRENCE J. GRADY
STAFF DIRECTOR

March 24, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Genachowski:

On November 13, 2009 and again on December 29, 2010, I wrote to you asking for information and documents related to possible White House involvement in net neutrality rulemaking by the Federal Communications Commission (FCC). Your February 23, 2011 response is incomplete. I asked you to provide "written responses and all requested records, emails and other documents" relevant to questions 1-8 in the November 13, 2009 letter. After more than a year, you have only provided a response partially addressing one of the Committee's eight questions and ignored the others.¹ While your interpretation of *ex parte* disclosure requirements is helpful, the remainder of the information requested is necessary for the Committee's ongoing investigation.

In the fourteen months since my initial request, the FCC has done little to demonstrate its independence from the White House. For example, according to records released by the White House in December 2009, on September 17, 2009—just four days prior to near simultaneous announcement by the White House and the FCC on proposed regulations for an open internet—you and your Chief of Staff, Edward Lazarus, met with Lawrence Summers, then the Director of the National Economic Council (NEC).² In addition, in the month following the April 7, 2010, decision by the United States Court of Appeals for the District of Columbia that the FCC lacked the authority to regulate network management practices,³ you and Mr. Lazarus had over a dozen

¹ Question 4 - the Commission's Office of General Counsel is not aware of any potential *ex parte* violations related to White House involvement in the development of the net neutrality rules.

² The White House, Visitor Access Records (accessed Mar. 16, 2011), available at <http://www.whitehouse.gov/briefing-room/disclosures/visitor-records>.

³ Comcast Corp. v. FCC, 600 F.3d 642 (D.C. Cir. 2010).

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meetings at the White House.⁴ Following these meetings, on May 6, 2010, the FCC announced its intent to pursue a "Third Way" approach to reclassifying broadband.⁵

Furthermore, based on information provided by the White House, between January 2009 and November 2010, you visited the White House 81 times.⁶ To put this in perspective, this equals the number of visits over the same period by the Secretary of Energy (11), Secretary of Homeland Security (16), Secretary of Defense (10), Secretary of Treasury (23), and Secretary of State (21) – combined.⁷ Mr. Lazarus has also made approximately 60 recorded trips to the White House.⁸ The large volume and timing of these meetings gives the appearance that they are more than coincidental. As such, the Committee requires more information about the nature and substance of these discussions.

President Obama has emphasized that he "is committed to creating an unprecedented level of openness in government."⁹ He has also recognized that the "[g]overnment should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears."¹⁰ Indeed, on March 16, 2011, the President accepted "an award from a coalition of good government groups and transparency advocates to recognize 'his deep commitment to an open and transparent government—of, by, and for the people' in conjunction with Sunshine Week."¹¹

As such, please provide the Committee with the following information from January 20, 2009 to the present:

1. A log of all meetings between and among FCC staff, and/or consultants and White House staff and/or consultants, including a list of all participants and topics discussed.
2. All documents, including e-mails, between and among White House staff and/or consultants and FCC staff and/or consultants relating to the net neutrality rules.
3. The information and documents previously requested in the Committee's November 13, 2009 letter.

⁴ The White House, Visitor Access Records (accessed Mar. 16, 2011), *available at* <http://www.whitehouse.gov/briefing-room/disclosures/visitor-records>.

⁵ Edward Wyatt, *F.C.C. Proposes Rules on Internet Access*, N.Y. TIMES, May 7, 2010, at B3, *available at* <http://www.nytimes.com/2010/05/07/technology/07broadband.html>.

⁶ The White House, Visitor Access Records (last visited Mar 18, 2011), *available at* <http://www.whitehouse.gov/briefing-room/disclosures/visitor-records>.

⁷ *See id.*

⁸ *See id.*

⁹ Memorandum for the Heads of Executive Departments and Agencies on Transparency and Open Government, DAILY COMP. PRES. DOCS., 2009 DCPD No. 00010 (Jan. 21, 2009), *available at* http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/.

¹⁰ *Id.*

¹¹ Matt Negrin, *Oh So Transparent: Obama Flaunts Openness Award*, POLITICO44, Mar. 16, 2011, http://www.politico.com/politico44/permalink/oh_so_transparent_bac12f28-96cb-4fb0-bf56-d325856ff3df.html (quoting White House guidance to reporters). Ironically, the awards ceremony was closed to the press.

The Honorable Julius Genachowski
March 24, 2011
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The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

We request that you provide the requested documents and information relevant to these inquiries as soon as possible, but no later than 5:00 p.m. on April 6, 2011. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact John Ohly or Kristin Nelson of the Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely

A handwritten signature in black ink, appearing to read "Darrell Issa", written over a horizontal line.

Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

Austin Schlick, Esq., General Counsel, Federal Communications Commission

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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Responding to Committee Document Requests

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when they were requested.
8. When you produce documents, you should identify the paragraph in the Committee's request to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

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FACIMILE TRANSMISSION

Date: March 24, 2011

To: The Honorable Julius Genachowski
Chairman
Federal Communications Commission

From: Darrell Issa, Chairman
Committee on Oversight and Government Reform

Phone:

Fax: (202) 418-2806

There will be a total of 8 pages, including cover page.

Comments:

Attached please find a letter from Darrell Issa, Chairman, Committee on
Oversight and Government Reform. The original copy of this letter has
been mailed to you.

*If there are any questions regarding this transmission,
please call the sender at 202-225-5074*

Please Note: The information on this facsimile is confidential and is intended only for the use of the person named above. If this facsimile has come to you in error, please call the sender at the number given above. Any distribution of this facsimile is strictly prohibited.



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

April 6, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

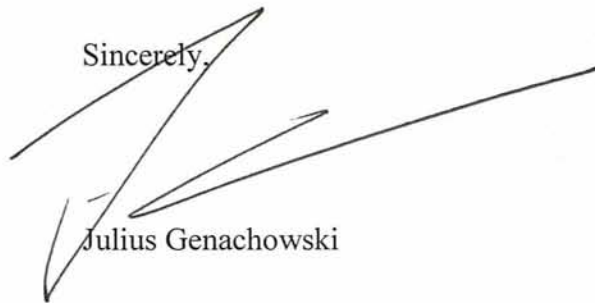
Dear Chairman Issa:

In response to your letter of March 24, 2011, on April 4 the FCC General Counsel met with majority and minority staff of the Oversight and Government Reform Committee. I understand that during this meeting, the General Counsel and staff had a productive discussion about the Commission's *ex parte* rules, the wide range of issues on which the Commission necessarily communicates with the Administration, and the White House appointment entries mentioned in your letter.

As I understand the General Counsel explained, and your staff asked that we further confirm, the statement in your May 24 letter that I "visited the White House 81 times" during 2009 and 2010 is incorrect. As I further understand the General Counsel discussed with staff, the visitor records made publicly available by the White House, and my appointments calendar for the corresponding times, indicate that since being confirmed as Chairman I visited the White House complex on approximately 20 occasions through 2010, including ceremonial and widely attended events. Finally, I understand it was agreed that your staff may have follow-up questions about some of these visits, and further discussion will best clarify those questions. To that end, my staff will arrange a follow-up conversation with Committee staff.

Thank you for providing Commission staff an opportunity to discuss the issues raised in your letter.

Sincerely,



Julius Genachowski

cc: Hon. Elijah Cummings